

MEMORANDUM

TO: Ginny Rowen, Department of Planning (#62)

FROM: Larr Kelly, Zoning Division, Department of Building and Development (#60)



DATE: December 29, 2010

RE: ZMAP 2002-0017: Parc Dulles II

As requested, I have reviewed the revised draft proffers, dated October 20, 2010, for the above referenced Zoning Map Amendment application. Pursuant to this review, I offer the following comments:

1. In regard to proffer I.A., in the second line thereof, I suggest that the reference to the "Parc Dulles II" Rezoning Application Plan Set be changed to refer to the "Parc Dulles II at Dulles Town Center ZMAP 2002-0017 SPEX 2008-0027" Application Plan Set in order to more accurately reflect what is written on the first sheet of the Application Plan Set.
2. In regard to proffer I.A.1.a., in the first line thereof, I suggest that the phrase "to include" be changed to read "Development shall include".
3. In regard to proffer I.A.1.b., in the second through fifth lines thereof, I suggest that this proposed standard be deleted, as it is not feasible to administer a proffer tied to the reflection of quality luxury developments in Northern Virginia, because it is a completely subjective standard.
4. In further regard to proffer I.A.1.b., in the seventh line of the proffer, I note that the applicant proposes the use of building materials that "would be similar in quality" to a list of materials. Again, this is a subjective standard. I suggest that the applicant provide their list of materials, and indicate that they shall limit the materials they intend to those identified on that list.
5. In further regard to proffer I.A.1.b., in the fifth and sixth lines thereof, I note that the applicant has indicated the intent to provide "a minimum of 1 picnic table" within the R-24 zoned portion of the Property. I suggest that the applicant be a bit more specific as to the location of such picnic table and the timing for the provision of such picnic table.
6. In further regard to proffer I.A.1.b., in the sixth through tenth lines of the second paragraph thereof, the applicant indicates the intent to provide a Type II Rear Buffer Yard in areas that are both adjacent to the PD-CC-CC zoning district and

subject to the "modified 50-foot setback". However, on the Concept Plan/Rezoning Plat, this area is labeled with the phrase "25' Type III Rear Buffer Yard". I suggest that this inconsistency be eliminated.

7. In regard to proffer I.A.2.a., in the first line thereof, I suggest that the phrase "to include" be changed to "Development shall include".
8. In further regard to proffer I.A.2.a., concerning commercial land uses, I note that the Rezoning Plat/Concept Plan states that the PD-CC-CC zoning district is to include 17,000 square feet of civic uses, and then refers to the proffers for the use list. It is not clear what the applicant intended with this note on the plat, but there is nothing in this proffer that addresses civic uses. I suggest that this inconsistency be eliminated.
9. In regard to proffer I.A.2.a.i., I note that the applicant proposes to construct "no more than 60,000 square feet" for non-office uses and "up to 75,000 square feet for office uses". These total 135,000 square feet, while the preceding proffer indicated that the total square footage in the PD-CC-CC zoning district would be 117,000 square feet. I suggest that a sentence be added indicating that despite the limits on non-office and on office, the total square footage for the PD-CC-CC site will not exceed the 117,000 square feet.
10. In further regard to proffer I.A.2.a.i., I suggest, that if the intent is to allow for the amount of non-office and office to fluctuate on the site over time, provided the respective caps are not exceeded, it is important for each site plan to contain a running total of non-office and office within this PD-CC-CC project. I suggest that this be proffered. I also suggest that inasmuch as this is a PD-CC-CC zoning district, non-office uses should predominate, rather than office uses. Therefore, I suggest that it would be appropriate to specify that the total square footage for non-office uses will, at all times, exceed that of office uses.
11. In further regard to proffer I.A.2.a.i., in the fourth line thereof, I suggest that the phrase "if SPEX 2008-0027 is approved" be inserted following the phrase "for office uses".
12. In further regard to proffer I.A.2.a.i., in the seventh line thereof, I suggest that the word "permitted" be changed to "requested". I further suggest that a sentence be added to the end of the proffer that states "If SPEX 2008-0027 is not approved, office use shall be limited to 23,400 square feet."
13. In regard to proffer I.A.2.a.iii., I begin by noting that there is no proffer I.A.2.a.ii., and I suggest that this proffer should be so numbered. However, this proffer provides for the inclusion of tabulations on the site plans for the area designated as "Limits of Office Special Exception". This does not really help with tracking.

Inasmuch as the total square footage for office and non-office apply throughout the PD-CC-CC Zoning District, I suggest that this be changed to include the whole PD-CC-CC Zoning District. I also suggest that the breakdown only needs to be Office and Non-Office. It does not seem to add anything to break out the square footage based on whether it is permitted by right or by special exception.

14. In regard to proffer I.A.3., in the third line thereof, I note that the applicant refers to the "PD-DD (CC) Zoning District". I suggest that this be changed to reference the PD-CC-CC Zoning District. Additionally, I note that the applicant is tying the issuance of the 400th residential zoning permit to the issuance of at least 28,000 square feet of non-residential. Inasmuch as the total number of residential permits is limited to 445, I urge staff to review the efficacy of this linkage provision.
15. In regard to proffer I.B., I note that the applicant states that they intend to develop the R-24 portion of the Property pursuant to the provisions of Section 7-1000 of the Zoning Ordinance. These are the standards for development when Affordable Dwelling Units (ADUs) are actually provided. Inasmuch as the applicant does not have a firm commitment to the provision of ADUs it is feasible that the applicant will not be able to develop using Section 7-1000 standards. I suggest that this be clarified in the language of the proffer.
16. In regard to proffer II., I note that the applicant has included a provision concerning "Unmet Housing Needs Units" wherein they intend to make dwelling units available to individuals whose income is between 100% and 120% of the Adjusted Median Income for the Washington area. However, it is not clear as of when this Adjusted Median Income is to be measured, as it currently exists or as it exists at some other point in time, such as the time of site plan submission or approval or zoning permit, etc. I suggest that this be clarified.
17. In further regard to proffer II., I note that the applicant may opt to participate in a federal or state "affordable housing program". I do not know what income limits are included in federal and state affordable housing programs, but it appears that in order to meet the intent of this proffer, any such program must serve the same income group as referenced in this proffer, and I suggest that it be clarified that any qualifying program must also serve this same income group.
18. In further regard to proffer II., in the ninth line of the second paragraph thereof, I suggest that the phrase "all ADUs under Article 7 and" be deleted, as the provisions set forth in this proffer only apply to the "Unmet Housing Needs Units", and this proffer cannot serve to amend the requirements of the ADU Ordinance..
19. In further regard to proffer II., in the tenth line thereof, I suggest that the word "Attorney" be deleted.

20. In regard to proffer IV.A., I note that BMP Facility 1 is to be designed to serve the residential area that "drains to the BMP Facility" while BMP Facility 2 is to serve the portion of the Property that lies to the west of the drainage channel. This leaves the question of whether there is any portion of the residential area that does not drain to BMP Facility 1, and if there is, it is not clear how this drainage is to be handled. I urge staff to ensure that the drainage for all portions of the site is being addressed.
21. In further regard to proffer IV.A., I suggest that the phrase " , as shown on Sheet 4 of the Rezoning Plat," as found in the second and third lines of the second paragraph of the proffer, be moved to the first line of the second paragraph, following the phrase "BMP Facility 2".
22. In further regard to proffer IV.A., in the second line of the third paragraph thereof, I suggest that the phrase "east of the drainage channel" be inserted following the phrase "zoned property".
23. In regard to proffer IV.B., in the second line thereof, the applicant refers to LID measures "deemed likely to be effective". I suggest that it be clarified what it is they are to be effective in doing. Additionally, in the fifth line thereof, I suggest that the phrase "measures are" be changed to "measure is".
24. In regard to proffer V., concerning the Archaeology Area, I do not understand why the applicant has included provisions concerning the potential disturbance of the Area when this area is shown to be in a Tree Conservation Area. As such, it should not be disturbed. I suggest that the applicant commit to not disturbing this Area.
25. In regard to proffer VI.A., concerning the Road Network, I note that the Rezoning Plat/Concept Plan continues to show a right in/right out entrance onto Nokes Boulevard. However, this access was only there to accommodate a potential fire and rescue site, which is no longer being proposed. I suggest that this entrance be removed from the Rezoning Plat/Concept Plan.
26. In further regard to proffer VI.A., I note that the applicant has indicated that all roads proffered herein for "access to and within" the Property are to be private roads. However, roads that access the site are actually supposed to be public roads. I suggest that this inconsistency be eliminated.
27. In regard to proffer VI.B., in the third line thereof, I suggest that the word "occupancy" be changed to "zoning".

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28. In further regard to proffer VI.B., in the sixth line thereof, I suggest that it be clarified whether the extension of Haleybird Drive is to be a divided or undivided roadway.
 29. In further regard to proffer VI.B., I note that the applicant has proffered to construct the extension of Haleybird Drive, for which they would like a credit against their capital facilities contribution, proffered elsewhere. However, I also note that the applicant is not taking any responsibility for the acquisition of the right-of-way for the extension of Haleybird Drive. I suggest that in order to get a credit the construction should actually be assured of occurring. Without the guarantee of the right-of-way being there, I do not see how this extension is assured of occurring. I suggest that the applicant commit to obtaining the necessary right of way at fair market value, and if it is unable to acquire such right-of-way, then the applicant should commit to requesting the County to obtain it through the use of eminent domain, with the applicant paying for the costs of such acquisition. Any such costs could also be the subject of a credit against the capital facilities contribution, but the construction would be better assured of occurring.
 30. In further regard to proffer VI.B., in the second paragraph thereof, in the sixth line thereof, I note that the applicant intends to be allowed to continue with the development of their Property without constructing Haleybird Drive in the event the right-of way needed for the extension is not provided by the owner of such land within thirty days of requesting such right-of-way. I suggest that this time period is extremely short, and that a longer period of time should be considered.
 31. In further regard to proffer VI.B., in the sixth and seventh lines thereof, I suggest that the phrase "shall not be delayed in its development" be changed to read "shall be permitted to proceed with development of the Property".
 32. In regard to proffer VI.C., in the first line thereof, I suggest that the phrase "Upon the request of the County or VDOT" be inserted prior to the phrase "the Owner shall".
 33. In further regard to proffer VI.C., in the third paragraph thereof, in the third line thereof, I suggest that the phrase "following site plan submission for any portion of the Property and prior to" be changed to read "between first site plan submission for any Portion of the Property and". However, I also suggest that the date "December 31, 2025" be deleted, as there is no way to know if development will even have commenced by that date. Instead I suggest that if by a certain level of development the warrants are not certified, then a cash contribution will be made to the County for the future installation of the signal.

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34. In regard to proffer VII.A. and VII.B., concerning capital facilities and open space contributions, I note that the contributions are to be made for each "market rate unit". I suggest that it be clarified as to whether or not this reference to "market rate units" is intended to include or exclude the "unmet housing needs units" referenced in proffer II.
 35. In further regard to proffer VII.A., I suggest that it be clarified whether or not the per unit contribution already reflects the credit the applicant has proposed for the construction of Haleybird Drive in proffer VI.B.
 36. In regard to proffer VII.C., concerning the escalation clause, in the second line thereof, I suggest that the phrase "the lesser of: (i) 2.5%, or (ii)" be deleted.
 37. In further regard to proffer VII.C., concerning the escalation clause, in the third through sixth lines thereof, I suggest that the phrase "however, no per unit cash contribution paid to the County, as escalated by this provision, will exceed the expected per unit capital facility contribution for multi-family units in effect at the time the cash contribution is paid" be deleted.
 38. In regard to proffer VIII., concerning the Route 28 Transportation Improvement District Payment, in the fifth line thereof, I suggest that the phrase "a portion of" be inserted prior to the phrase "the Property to a residential use". Additionally, in the same line of the proffer, I suggest that the phrase "residential portion of the" be inserted prior to the phrase "Property shall not be obligated".
 39. In regard to proffer IX.A., concerning the provision of four bike racks, I note that there is nothing to indicate when the racks are to be provided. I suggest that this be addressed. I also urge staff to consider whether or not the County should have input into the location of the bike racks, as none is currently provided.
 40. In regard to proffer IX.B., in the second line of the last paragraph thereof, I suggest that the phrase "issuance of the 250th zoning permit" be changed to read "issuance of the 250th residential zoning permit on the Property".
 41. In further regard to proffer IX.B., in the second line thereof, I suggest that the phrase " , including the benches and picnic tables referenced in proffer I.A.1.b.," be inserted following the phrase "network of Community and Village Greens".
 42. In further regard to proffer IX.B., I note that the Rezoning Plat/Concept Plan shows an area designated as "Community Facility, see proffers for use list". This proffer seems to be the logical place to include proposed community uses for this site, but it is not here or anywhere. I suggest that the applicant clarify their intent in regard to what use or uses they intend to provide on this "Community Facility" site.

43. In regard to proffer IX.C., concerning Tree Conservation, in the ninth line of the first paragraph thereof, I note that the applicant makes specific references to areas shown on Sheet 7. However, Sheet 7 has not been proffered. I suggest that if the applicant intends to make such specific references to this sheet, then it should be included in the Rezoning Plat/Concept Plan for this project.
44. In further regard to proffer IX.C., in the third paragraph thereof, the applicant refers to "Lost Canopy located within the boundaries of a Tree Conservation Area" and suggests that if "Lost Canopy" is damaged as a consequence of construction and will not survive, then the applicant will plant replacement trees. This does not make sense, inasmuch as "Lost Canopy" is defined in the second paragraph as "that portion of the healthy tree canopy lost that reduces the cumulative Tree Conservation Area below the 80% threshold". If "Lost Canopy" is canopy that is already lost, then it can no longer be damaged. I suggest that the applicant clarify their intent.
45. In regard to proffer IX.F., in the third line thereof, the applicant again makes specific reference to Sheet 7. I again suggest that this sheet be specifically proffered.
46. In further regard to proffer IX.F., in the fourth through sixth lines thereof, I suggest removing the parenthetical concerning Section B and making it a sentence specific to Section B.
47. In regard to proffer IX.H.1., concerning construction waste management, I note that "prior to the approval of each building permit" the applicant intends to provide the County with a plan for diverting from landfill disposal "at least fifty percent of the construction debris generated by construction on the Property". However, it is not clear how the applicant intends to show a plan for each building that is based on the whole Property. As written, I can see no way for the County to track this proffer. I suggest that this proffer be revised so that compliance can be tracked.
48. In further regard to proffer IX.H.1., in the third line thereof, I suggest that commas be placed around the phrase "for the building associated with such permit".
49. In regard to proffer IX.H.2., in the fifth line thereof, I suggest that the phrase "installed in each unit" be inserted prior to the phrase "prior to issuance of each".
50. In regard to proffer IX.H.3., in the last sentence thereof, I note that the applicant has indicated the intent to provide a list of Energy Star appliances "to be installed" in each unit prior to the issuance of the first residential certificate of

occupancy. I suggest that this be changed to require that the list be of installed appliances, and that such list be provided prior to the issuance of each occupancy permit.

51. In regard to proffer X.A., in the first line thereof, the applicant has stated that the per unit contribution for emergency services is only to be paid for each market rate unit. It is my understanding that the County's policy requests such contributions for all units, including ADUs. However, as written ADUs are not addressed, and it is not clear whether the term "market rate" unit is intended to include the "unmet housing needs units". I suggest that consideration be given to including the ADUs under this provision and that it be clarified whether the "unmet housing needs units" are intended to be included.
52. In regard to both proffer X.A. and X.B., I note that there is no specific provision for the escalation of this proffer. County policy requests that emergency services contributions be escalated in accord with changes to the Consumer Price Index, with 1988 as the base year. I suggest that such a provision be included.
53. In regard to proffer XI., concerning the submission of the Property to the Owners Association for Dulles Town Center, I suggest that it be included herein that the documentation for such submission be submitted to the County for review and approval prior to approval of the first record plat or first site plan for the Property, whichever is first in time. I also suggest that it be specified what responsibilities the Owners Association is to have in regard to the Property.
54. These proffers will need to be signed by all landowners, and be notarized, prior to the public hearing on this application before the Board of Supervisors.